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March 15, 2004

Hon Deborah Taylor Tate
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee TN 37238

Re: Implementation of the Federal Communications Commission's
Triennial Review Order (Nine -Month Proceeding) (Loop and Transport
Docket 03-00527

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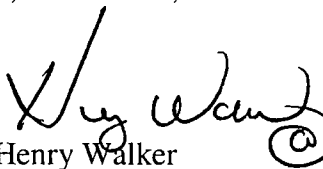
Dear Chairman Tate:

Enclosed please find 4 copies and 1 CD ROM of the Non-Proprietary Rebuttal Testimony
of Gary J Ball on behalf of CompSouth

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By.


Henry Walker

HW/pp

BEFORE THE TENNESSEE REGULATORY AUTHORITY

In Re:)	
)	
Implementation of the Federal)	Docket No. 03-00527
Communications Commission's Triennial)	
Review Order (Nine-Month Proceeding))	
(Loops and Transport))	
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REBUTTAL TESTIMONY

OF

GARY J. BALL

ON BEHALF OF

COMPETITIVE CARRIERS OF THE SOUTH

March 15, 2004

PUBLIC DISCLOSURE COPY

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1 **Q. PLEASE STATE YOUR FULL NAME, TITLE AND BUSINESS**
2 **ADDRESS.**

3 A. My name is Gary J. Ball. I am an independent consultant providing
4 analysis of regulatory issues and testimony for telecommunications
5 companies. My business address is 47 Peaceable Street, Ridgefield,
6 Connecticut 06877

7
8 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS**
9 **PROCEEDING?**

10 A. I am testifying on behalf of the Competitive Carriers of the South
11 ("CompSouth"). CompSouth is a coalition of competitive carriers
12 operating in the Southeast, including in Tennessee, that are committed to
13 the advancement of policies that encourage local and long distance
14 competition in the state.

15
16 **Q. ARE YOU THE SAME GARY BALL THAT SUBMITTED DIRECT**
17 **TESTIMONY ON BEHALF OF COMPSOUTH ON MARCH 1,**
18 **2004?**

19 A. I am.

20
21 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

22 A. The purpose of my rebuttal testimony is to analyze and rebut BellSouth's
23 assertions regarding the self-provisioning and wholesale triggers for high

1 capacity loops and dedicated transport, and BellSouth's claims that
2 numerous transport routes satisfy the FCC's rigorous potential deployment
3 requirements.

4 In its *Triennial Review Order* ("TRO"),¹ the FCC determined that
5 incumbent local exchange carriers ("ILECs") must continue to provide
6 CLECs with access to unbundled loops and dedicated transport at the DS1,
7 DS3, and dark fiber capacity levels ("high-capacity loops" and "dedicated
8 transport") The FCC conducted a comprehensive analysis that resulted in
9 this determination that CLECs are impaired without access to high-
10 capacity loops and dedicated transport at the national level. Recognizing
11 that there may be individual customer locations or transport routes where
12 competitively provisioned loops and transport have been deployed to such
13 an extent that CLECs are not impaired, the FCC developed a procedure
14 known as the trigger analysis ("triggers"). The triggers are designed to
15 give ILECs an opportunity to demonstrate to their respective state
16 commissions that CLECs are not impaired without access to unbundled
17 high-capacity loops or transport at *specific* customer locations or on
18 *specific* dedicated transport routes for specific capacity levels. The two

¹ Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers* (CC Docket No. 01-338); *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996* (CC Docket No. 96-98), *Deployment of Wireline Services Offering Advanced Telecommunications Capability* (CC Docket No. 98-147), FCC 03-36 (rel. Aug. 21, 2003).

1 triggers the FCC adopted – self-provisioning and wholesale – are meant to
2 be evaluated independently and should not be blended in analysis.

3 In my testimony, I demonstrate that BellSouth, through its witness
4 Shelley W. Padgett, has grossly overstated the number of enterprise
5 customer locations and transport routes that satisfy the self-provisioning
6 and wholesale triggers. Additionally, I explain why BellSouth’s potential
7 deployment analysis for high capacity loops and dedicated transport
8 contained in Dr. Andy Banerjee’s testimony fails to incorporate the FCC’s
9 route-specific analysis, and as a result produces unjustifiable quantities of
10 transport routes and customer locations for which BellSouth erroneously
11 contends that the TRA should make non-impairment findings and relieve
12 BellSouth of its unbundling obligations.

13

14 **Q. HOW IS YOUR TESTIMONY ORGANIZED?**

15 A. My testimony is divided into six sections. In Section I, I discuss how
16 BellSouth is incorrectly interpreting the requirements of the *TRO*. In
17 Section II, I critique BellSouth’s self-provisioning trigger analysis, and
18 explain how BellSouth’s has overstated the number of buildings and
19 routes that meet the triggers due to its incorrect interpretations of the *TRO*.
20 In Section III, I provide a similar critique of BellSouth’s wholesale trigger
21 analysis. In Section IV, I describe the FCC’s potential deployment
22 criteria. In Section V, I critique BellSouth’s potential deployment analysis

1 relating to loops and transport In Section VI, I address Ms. Padgett's
2 inadequate proposal for transitioning services that have been delisted.

3

4 **I. BELLSOUTH'S INTERPRETATIONS OF THE *TRO* ARE**
5 **INCORRECT**

6

7 **Q. MS. PADGETT MAKES SEVERAL ASSERTIONS IN HER**
8 **TESTIMONY REGARDING PROPER INTERPRETATION OF**
9 **THE *TRO*. CAN YOU SUMMARIZE THESE ASSERTIONS?**

10 **A.** Yes. First, Ms. Padgett claims that it is appropriate to include OC(n) level
11 loop and transport services in the self-provisioning trigger analyses for
12 DS1, DS3, and dark fiber. Second, Ms. Padgett asserts that CLECs do not
13 have to be offering dedicated transport service between the "A" and "Z"
14 wire centers for a route to be included, and that switched transport can be
15 counted as dedicated transport for the purposes of the triggers. Third, Ms.
16 Padgett asserts that a CLEC is not required to offer wholesale service at a
17 specific location or route for that location or route to be counted toward
18 the trigger Fourth, Ms. Padgett asserts that it is not necessary for a CLEC
19 to have access to an entire building to meet the self-provisioning triggers.
20 Finally, Ms. Padgett asserts that wholesale loops do not have to be offered
21 at wire center collocation arrangements. Each of these assertions is
22 incorrect.

23

1 **Q. HOW DO THESE ASSERTIONS IMPACT BELL SOUTH'S**
2 **PROPOSED TRIGGER ANALYSIS?**

3 A. The result of applying BellSouth's interpretations to the triggers is a much
4 larger number of buildings and routes than would result from an accurate
5 and realistic reading of the *TRO*.

6
7 **Q. PLEASE EXPLAIN MS. PADGETT'S ASSERTION REGARDING**
8 **INCLUDING OC(N) LEVEL SERVICES IN THE SELF-**
9 **PROVISIONING TRIGGERS.**

10 A. On pages 8 and 26 of her direct testimony, Ms. Padgett declares that
11 OC(n) facilities should count for the DS3 and DS1 triggers based upon her
12 understanding that DS3 and DS1 services can be derived from an OC(n)
13 system. For example, if a carrier has deployed an OC(3) system, that
14 system potentially could be configured with the appropriate electronics to
15 derive 3 DS3s, each of which can be further multiplexed to derive 28
16 DS1s. Ms. Padgett asserts that the FCC intended for this "potential
17 capability" of the CLEC networks to be included in the triggers.

18
19 **Q. IS MS. PADGETT'S ASSERTION REGARDING OC(N) LEVEL**
20 **SERVICES CONSISTENT WITH THE *TRO*'S IMPAIRMENT**
21 **ANALYSIS AND CONCLUSIONS?**

22 A. No. In fact, it is the opposite of the FCC's approach. The FCC concluded
23 that locations and routes served by OC(n) and multiple (3 and above) DS3

1 facilities have significantly different economic characteristics from those
2 served by stand alone dark fiber, DS1, and individual DS3 services. The
3 FCC concluded that CLECs generally can receive enough revenue for
4 OC(n) and multiple DS3 service locations and routes to offset their costs
5 of network construction and installation, and made a national finding of
6 non-impairment for those services. For locations and routes that only
7 support standalone DS1 or DS3 services, the FCC concluded that CLECs
8 cannot receive enough revenue to recover their costs of construction, and
9 made a national finding of impairment that can be overcome on a location
10 or route specific basis by the triggers. If the FCC had intended for any
11 OC(n) level service to count toward the DS1, DS3, and dark fiber triggers,
12 as Ms. Padgett suggests, then it would not have made such a distinction,
13 and simply would have declared no impairment wherever any type of
14 OC(n) service is provided instead of developing the capacity-specific
15 triggers. The fact that the FCC concluded that enough customer demand
16 exists to support OC(n) or 3 DS3 levels of loop or transport is not
17 indicative of a CLEC's ability to provide DS1, DS3 or dark fiber on those
18 routes or at those locations.

19
20 **Q. MS. PADGETT ASSERTS THAT, TO THE EXTENT A CLEC CAN**
21 **DERIVE OR IS DERIVING A DS1 OR DS3 SERVICE FROM AN**
22 **EXISTING OC(N) SYSTEM AT A GIVEN LOCATION, THEN**

1 **THAT LOCATION SATISFIES THE TRIGGER. DID THE FCC**
2 **EXPLICITLY REJECT SUCH AN APPROACH ?**

3 A. Yes. In its discussion of impairment for DS1 loops in paragraph 325, the
4 FCC rejected such an arrangement as evidence of self-deployment. In
5 footnote 957, the FCC stated “[w]e note that at least two competitive
6 LECs have provided evidence that they self-provide some DS1 capacity
7 loops to certain customer locations. *See supra* note 859. It is important to
8 note, however, that this evidence of self-provisioning has been possible
9 where that same carrier is already self-provisioning OCn or a 3 DS3 level
10 of loop capacity to that same customer location. Thus, this evidence does
11 not support the ability to self-deploy stand-alone DS1 capacity loops nor
12 does it impact our DS1 impairment finding.”

13
14 **Q. BASED UPON THE FCC’S OWN INTERPRETATION IN**
15 **FOOTNOTE 957, IS IT REASONABLE TO CONCLUDE THAT**
16 **THE FCC INTENDED TO EXCLUDE FROM THE TRIGGERS**
17 **ANY LOCATION OR ROUTE WHERE AN OC(N) OR 3 DS3**
18 **LEVEL OF CAPACITY HAS BEEN DEPLOYED BY A CLEC,**
19 **EVEN IF INDIVIDUAL DS1S OR DS3S HAVE BEEN OR CAN BE**
20 **DERIVED FROM THAT SYSTEM?**

21 A. Yes The FCC’s impairment analysis is based upon distinguishing
22 locations with high demand for network capacity from those with low
23 demand The FCC already has assumed that CLECs can self-provision

1 facilities to the “high demand” locations, which was the basis of its
2 impairment analysis. In the FCC’s view, a CLEC that has deployed an
3 OC(n) or 3 DS3 level of capacity to a location or a route is merely
4 evidence that the location is a “high demand” location, for which the FCC
5 already has concluded that no impairment exists. The narrower
6 circumstance the FCC is seeking in the triggers are those “low demand”
7 locations for which DS1, DS3, or dark fiber services are being deployed
8 without the benefit of existing OC(n) or 3 DS3 facilities.

9
10 **Q. ON PAGE 25 OF HER TESTIMONY, MS. PADGETT ASSERTS**
11 **THAT THE *TRO* DOES NOT REQUIRE EVIDENCE THAT CLECS**
12 **ARE OFFERING DEDICATED TRANSPORT SERVICE**
13 **BETWEEN ILEC WIRE CENTERS IN ORDER FOR THE TWO**
14 **WIRE CENTERS TO BE CONSIDERED ENDPOINTS OF A**
15 **DEDICATED TRANSPORT ROUTE. IS MS. PADGETT**
16 **CORRECT?**

17 **A.** No. In paragraph 401 of the *TRO*, in defining a transport route, the FCC
18 states: “[w]e define a route, for purposes of these tests, as a connection
19 between wire center or switch 'A' and wire center or switch 'Z.' Even if,
20 on the incumbent LEC’s network, a transport circuit from 'A' to 'Z' passes
21 through an intermediate wire center 'X,' *the competitive providers must*
22 *offer service connecting wire centers 'A' and 'Z,'* but do not have to mirror
23 the network path of the incumbent LEC through wire center 'X.'”

1 (emphasis added). This definition is consistent with the FCC's desire to
2 have market-based evidence as the primary means of identifying routes
3 where there may be no impairment
4

5 **Q. DOES THE *TRO* REQUIRE EVIDENCE THAT SERVICE IS**
6 **BEING PROVIDED OR OFFERED AT THE SPECIFIC**
7 **CAPACITY LEVELS CONTEMPLATED BY THE *TRO*?**

8 A. Yes. Each of the *TRO*'s trigger definitions requires evidence that the
9 CLEC is providing service at that specific capacity level. For example, in
10 describing the self-provisioning trigger in paragraph 329, the FCC states
11 that the ILEC's unbundling obligation can be eliminated "where a specific
12 customer location is identified as being *currently served* by two or more
13 unaffiliated competitive LECs with their own loop transmission facilities
14 *at the relevant loop capacity level.*" (emphasis added). For wholesale
15 triggers, the ILEC's unbundling obligations can be eliminated "where two
16 or more unaffiliated competitive providers have deployed transmission
17 facilities to the location and *are offering* alternative loop facilities to
18 competitive LECs on a wholesale basis *at the same capacity level.*" For
19 transport, the wholesale trigger definition in paragraph 400 provides
20 "[s]pecifically, we find that competing carriers are not impaired where
21 competing carriers have available two or more alternative transport
22 providers, not affiliate with each other or the incumbent LEC, *immediately*
23 *capable and willing to provide transport at a specific capacity along a*

1 given route between incumbent LEC switches or wire centers.” (emphasis
2 added). For the self-provisioning transport trigger, the *TRO* anticipates
3 that the test will be performed for specific capacity levels. In the *TRO*, the
4 FCC states “we note that where, through the application of this trigger,
5 impairment for unbundled transport *at a particular capacity* is no longer
6 found, substantial competitive transport facilities, and perhaps other
7 capacities of UNE transport will be available. Therefore, if this trigger
8 removes unbundled transport *at a particular capacity level*, carriers will
9 remain capable of serving end-user customers in all areas.” *TRO* ¶ 407.

10

11 **Q. ON PAGE 19 OF HER TESTIMONY, MS. PADGETT ALSO**
12 **ASSERTS THAT TRAFFIC ROUTED THROUGH A CLEC**
13 **SWITCH SHOULD BE COUNTED AS DEDICATED TRANSPORT.**
14 **DO YOU AGREE?**

15 A. No. This type of arrangement is switched transport. Switched transport
16 cannot meet the FCC’s definition of dedicated transport, because the route
17 can not be dedicated to a particular customer or carrier. A dedicated
18 transport route has two endpoints, and traffic only can flow between one
19 endpoint to another endpoint. Switched transport, on the other hand, has
20 at least three endpoints, as the function of the switch is to provide
21 temporary connections between pairs of the numerous endpoints
22 connected to the switch. The “route” in this instance is shared among all

1 carriers and customers that are connected to the switch. This is why
2 switched transport is also generally referred to as “shared transport.”
3

4 **Q. DOES THE FCC DISTINGUISH SHARED TRANSPORT FROM**
5 **DEDICATED TRANSPORT IN THE *TRO*?**

6 A. Yes. In footnote 1100 of the *TRO*, the FCC states that “[w]e refer
7 generically to “transport” in this Part as meaning dedicated transport. We
8 address shared transport in Part VI.E. of this Order.”
9

10 **Q. MS. PADGETT RELIES PRIMARILY UPON THE FCC’S USE OF**
11 **THE TERM “SWITCH” IN THE RULES DEFINING A**
12 **TRANSPORT ROUTE. IN WHAT CONTEXT IS THE FCC USING**
13 **THAT TERM?**

14 A. The FCC is using the term switch as an alternative term for wire center
15 and shorthand for “switching center” or “switch location.” This is
16 consistent with the use of the term in paragraph 401, in which the FCC
17 defines a route as a connection between wire center or switch “A” and
18 wire center or switch “Z.” There are numerous names the industry uses to
19 describe the ILEC building that houses the ILEC’s switches and serves as
20 an aggregation point for loop facilities, including “central offices”, “end
21 offices”, “wire centers”, “switching centers”, and “switching offices,” and
22 it is common to shorten the term switching center to switch to describe
23 such a building.

1 **Q. ON PAGE 12 OF HER TESTIMONY, MS. PADGETT ASSERTS**
2 **THAT IT IS NOT NECESSARY TO DEMONSTRATE THAT A**
3 **CLEC IS OFFERING WHOLESALE SERVICE AT A**
4 **PARTICULAR LOCATION OR ON A GIVEN ROUTE TO MEET**
5 **THE WHOLESALE TRIGGERS. IS THIS CONSISTENT WITH**
6 **THE FCC’S DEFINITION OF THE WHOLESALE TRIGGERS?**

7 A. No. The FCC specifically provided that the wholesale triggers require
8 location- or route-specific evidence of an offering of service. In paragraph
9 337 of the *TRO*, in which the FCC defines the wholesale trigger for loops,
10 the FCC states, “[w]here competitive LECs have two alternative choices
11 (apart from the incumbent LEC’s network) to purchase wholesale high-
12 capacity loops, including intermodal alternatives, *at a particular premises*,
13 we conclude that impairment does not exist at that location for that type of
14 high-capacity loop.” (emphasis added). Likewise, in defining the
15 wholesale trigger for transport in paragraph 400, the FCC states,
16 “[s]pecifically we find that competing carriers are not impaired where
17 competing carriers have available two or more alternative transport
18 providers, not affiliated with each other or the incumbent LEC,
19 immediately capable and willing to provide transport at a specific capacity
20 *along a given route* between incumbent LEC switches or wire centers.”
21 (emphasis added). Ms. Padgett’s proposal to essentially label every CLEC
22 route and building as wholesale is clearly at odds with the FCC’s location-
23 and route-specific requirements.

1 **Q. ON PAGE 6 OF HER TESTIMONY, MS. PADGETT STATES**
2 **THAT A CLEC'S SERVICE SHOULD QUALIFY FOR THE SELF-**
3 **PROVISIONING TRIGGER EVEN IF THE CLEC DOES NOT**
4 **HAVE ACCESS TO THE ENTIRE CUSTOMER LOCATION. IS**
5 **SHE CORRECT?**

6 A. No. Ms. Padgett is basing her assertion solely upon her contention that the
7 rule for the wholesale loop trigger explicitly requires that the CLEC has
8 access to the entire customer premises, while the self-provisioning trigger,
9 according to Ms. Padgett, does not state the same in explicit terms. Ms.
10 Padgett ignores the fact that the self-provisioning trigger also has a
11 different set of requirements from the wholesale trigger, and that the FCC
12 is using self-provisioned service as evidence that CLECs can overcome
13 the economic barriers to providing standalone DS3 services. The self-
14 provisioning trigger requires evidence of actual service to a customer
15 location, as opposed to the wholesale trigger, which requires evidence of
16 the ability to serve an entire building. This is a distinct difference for
17 large multi-unit buildings, in that a customer location may be a particular
18 floor within the building. To the extent that the CLEC only has
19 provisioned service to that particular customer location, then there cannot
20 be a finding of non-impairment for the remaining customers and customer
21 locations within the building, and to have the entire building meet the
22 trigger would produce a result that is contrary to the FCC's impairment
23 analysis.

1 Indeed, in the *TRO*, the FCC stated that CLECs must “have
2 existing facilities in place serving customers at that location.” *TRO* ¶ 332.
3 If the CLEC only has provisioned facilities to serve part of the building,
4 then the entire building does not meet this requirement. The appropriate
5 interpretation is for the individual customer location to be counted toward
6 the trigger, but not the entire building.

7
8 **Q. ON PAGE 5 OF HER TESTIMONY, MS, PADGETT STATES**
9 **THAT CLEC LOOPS THAT DO NOT TERMINATE IN A CLEC**
10 **COLLOCATION SHOULD BE COUNTED TOWARDS THE**
11 **WHOLESALE TRIGGER. IS THIS AN APPROPRIATE**
12 **INTERPRETATION?**

13 A. No. Ms. Padgett ignores the requirement that wholesale services be made
14 “widely available” to other CLECs. To the extent that wholesale loops are
15 made available at an ILEC wire center, all of the CLECs that have access
16 to that wire center also will have reasonable access to the wholesale
17 CLEC’s loops. As I described above, CLECs generally have configured
18 their networks to utilize unbundled loops at the ILEC wire center. To the
19 extent that a wholesale CLEC requires its customers to extend their
20 networks to a different location, then the wholesale CLEC’s loops would
21 not be widely available, and CLECs would be limited both economically
22 and logistically from using the wholesale service.

23

1 **II. CRITIQUE OF BELL SOUTH'S SELF-PROVISIONING TRIGGER**
2 **ANALYSIS**

3 A. HIGH CAPACITY LOOPS

4 **Q. HAVE YOU REVIEWED BELLSOUTH'S TESTIMONY**
5 **CONCERNING THE APPLICATION OF THE SELF-**
6 **PROVISIONING TRIGGER TO HIGH CAPACITY LOOPS?**

7 A. Yes, I have reviewed the testimony of Shelley W. Padgett regarding High-
8 Capacity Loops beginning at page 2 of her testimony.

10 **Q. WHAT WERE BELLSOUTH'S CONCLUSIONS REGARDING**
11 **THE SELF-PROVISIONING TRIGGER ANALYSIS?**

12 A. BellSouth has asserted that 37 customer loop locations satisfy the self-
13 provisioning trigger at both the DS3 and dark fiber capacity levels. The
14 specific customer locations are listed on Exhibit SWP-3 of Ms. Padgett's
15 Testimony.

17 **Q. PLEASE DESCRIBE THE PROCESS THAT BELL SOUTH USED**
18 **TO IDENTIFY HIGH CAPACITY LOOP LOCATIONS FOR ITS**
19 **SELF-PROVISIONING TRIGGER ANALYSIS.**

20 A BellSouth developed a list of building locations for which it claims
21 competitive providers have deployed fiber optic facilities using discovery
22 responses from the competitive providers and data from GeoResults, a
23 third-party marketing firm. For each building on the list, BellSouth asserts
24 that two or more competitive providers are providing services at the

1 building for both the dark fiber and DS3 capacity levels, and thus claims
2 that the self-provisioning trigger has been met. BellSouth lists the
3 following carriers as self-provisioning trigger providers at one or more
4 locations: ***** BEGIN CONFIDENTIAL *****

5

6

7

***** END**

8

CONFIDENTIAL ***

9

10 **Q. DID YOU REVIEW ANY OF THE DATA RESPONSES PROVIDED**
11 **BY THESE CLECS?**

12 A. Yes. I reviewed the proprietary responses of ***** BEGIN**

13 **CONFIDENTIAL *****

14

15

16

***** END**

17

18

19

20 **Q. DID BELLSOUTH APPROPRIATELY IMPLEMENT THE SELF-**
21 **PROVISIONING TRIGGER FOR HIGH CAPACITY LOOPS?**

22 A. No. Based on my review of the information in this case, including the
23 majority of the CLEC data responses, BellSouth has overstated the

1 number of customer locations for which the self-provisioning loop trigger
2 is met. In Exhibit GJB-1, I have revised Exhibit SWP-3 of Ms. Padgett's
3 testimony based on the data contained in the CLEC discovery responses.
4 Where CLECs acknowledged in their discovery responses that they self-
5 provisioned loops at the DS3 level, I indicated so under the column with
6 the CLEC's name. If a CLEC that BellSouth listed as serving a particular
7 location did not indicate that it served that location in its discovery
8 responses, then I noted that the CLEC does not qualify as a trigger
9 candidate at that customer location. In doing so, I specified the reason that
10 the CLEC does not qualify in the column titled "Basis of Exclusion." Of
11 the discovery responses that I have reviewed, no CLEC indicated that it
12 self-provisioned dark fiber loops at any customer location.

13

14 **Q. OF THE BUILDINGS LISTED IN BELL SOUTH'S TESTIMONY,**
15 **HOW MANY BUILDINGS POTENTIALLY SATISFY THE SELF-**
16 **PROVISIONING TRIGGER BASED UPON THE CLEC DATA**
17 **RESPONSES?**

18 A. Of the customer locations that BellSouth claims satisfy the self-
19 provisioning trigger for DS3 loops, I have identified 4 buildings that may
20 meet the trigger. These buildings are indicated with a "1" in the column
21 titled "Trigger Candidate?" in Exhibit GJB-1. There are 5 additional
22 buildings that could potentially meet the trigger depending upon clarifying
23 the responses of *** **BEGIN CONFIDENTIAL** ***

1

2

3

***** END CONFIDENTIAL**

4

5

6 **Q. PLEASE EXPLAIN THE CODES YOU PROVIDED UNDER THE**
7 **BASIS OF ELIMINATION COLUMN.**

8 A I used four different codes in the “basis of elimination” column to
9 disqualify CLECs as triggers from the buildings BellSouth listed in
10 Exhibit SWP-3. The first code is NR, which means that the building
11 BellSouth indicated as being served by a CLEC was not included in the
12 building list provided by the CLEC. The second code is OCN, which
13 indicates that the CLEC is providing OCN or 3 DS3 and above level
14 service at the location. The third code is GEO, which indicates that
15 BellSouth relied solely upon GeoResults to identify the trigger. The
16 fourth and final code is NDS3, indicating that the CLEC stated in its
17 discovery responses that it is not currently self-provisioning loops at the
18 DS3 capacity level to the given location.

19

20 **Q. PLEASE PROVIDE AN EXAMPLE OF A CLEC THAT**
21 **BELLSOUTH INCLUDED AS A TRIGGER EVEN THOUGH**
22 **THAT CARRIER DID NOT INCLUDE ANY TENNESSEE**
23 **BUILDINGS IN ITS DISCOVERY RESPONSE.**

1 A. In its region-wide discovery response, *** BEGIN CONFIDENTIAL

2 ***

3

4

5

*** END CONFIDENTIAL ***

6

7 Q. PLEASE EXPLAIN YOUR BASIS OF EXCLUDING BUILDINGS
8 BEING SERVED AT AN OC(N) OR 3 DS3 AND ABOVE LEVEL
9 OF CAPACITY?

10 A. As I described earlier in my testimony, the FCC has already determined
11 that no impairment exists for locations that have a demand for an OC(n) or
12 3 DS3 level of capacity, and is seeking to identify locations that have
13 lower demand for only 1 or 2 DS3s. A location for which a CLEC is
14 providing 3 or more DS3s does not provide evidence that another CLEC
15 can overcome the costs of deploying a loop to serve only 1 or 2 DS3s.

16

17 Q. HOW DID BELL SOUTH USE GEORESULTS TO SUPPORT ITS
18 TRIGGER FILINGS?

19 A. In her testimony, Ms. Padgett states that BellSouth relied upon GeoResults
20 to identify building locations for its trigger analyses if BellSouth believed
21 that the CLEC data BellSouth received was incomplete if it did not receive
22 CLEC data. In Exhibit SWP-13 to her testimony, Ms. Padgett indicates
23 the following carriers for which BellSouth relied solely upon GeoResults:

1 *** BEGIN CONFIDENTIAL ***

2 *** END

3 **CONFIDENTIAL *****

5 Q. BASED UPON YOUR REVIEW OF GEORESULTS OUTPUTS IN
6 OTHER STATES, DOES GEORESULTS PROVIDE SUFFICIENT
7 INFORMATION TO DETERMINE WHETHER CLECS ARE
8 PROVIDING SERVICE CONSISTENT WITH THE SELF-
9 PROVISIONING OR WHOLESALE TIGGERS?

10 A. No. GeoResults produces a lengthy list of companies for which it
11 identifies as “Lit CLECs”, including retail establishments, banks,
12 enterprise customer locations, paging companies, and long distance
13 resellers. It does not appear to have the intelligence to distinguish actual
14 fiber facilities from those using another carrier's facilities.

16 **Q. HAS ANOTHER ILEC ACKNOWLEDGED THAT GEORESULTS**
17 **FALSELY IDENTIFIES CLECS AS PRESENT IN BUILDINGS**
18 **WHEN THEY ACTAULLY ARE NOT?**

19 A. Yes. For example, in Illinois, SBC testified that GeoResults had identified

20 *** BEGIN CONFIDENTIAL ***

21 ***** END CONFIDENTIAL ***** See

22 **Testimony of Rebecca L. Sparks on Behalf of SBC Illinois, Illinois**

23 Commerce Commission, Docket No. 03-0596, at 17 (Feb. 4, 2004).

1

2 Q. DO YOU HAVE SPECIFIC DOUBTS AS TO WHETHER
3 CERTAIN CLECS LISTED BY BELL SOUTH COULD QUALIFY
4 AS TRIGGERS?

5 A. Yes. For example, *** BEGIN CONFIDENTIAL ***

6

7

8

9

10

11

12

13

14 *** END CONFIDENTIAL *** Clearly, if BellSouth
15 identified these companies based on GeoResults, then the methodology
16 used by GeoResults must be called into question.

17

18 Q. HOW SHOULD THE GEORESULTS DATA BE USED IN THE
19 TRIGGER ANALYSES?

20 A. The data could be used to develop a baseline list of buildings, which then
21 could be presented to the CLECs. The CLECs, in turn, could validate
22 whether the information contained in GeoResults is accurate and whether

1 they are providing the appropriate type and capacity level of service
2 required by the triggers.

3
4 **Q. HOW SHOULD THE TRA PROCEED BASED UPON THE**
5 **EVIDENCE PROVIDED?**

6 A. I recommend that the Authority request further information from the
7 trigger CLECs for the 9 buildings that I have identified as potentially
8 meeting the triggers. Such information includes identifying whether the
9 CLECs are currently self-provisioning DS3 loops at the location, whether
10 they are doing so as part of an OC(n) or 3 DS3 level of demand, and
11 whether they have access to all customers in the building.

12

13 **B. DEDICATED TRANSPORT**

14 **Q. HAVE YOU REVIEWED BELLSSOUTH'S TESTIMONY**
15 **CONCERNING THE APPLICATION OF THE SELF-**
16 **PROVISIONING TRIGGER TO DEDICATED TRANSPORT**
17 **ROUTES?**

18 A. Yes, I have reviewed the testimony of Shelley W. Padgett beginning on
19 page 17.

20

21 **Q. WHAT WERE BELLSSOUTH'S CONCLUSIONS REGARDING**
22 **THE SELF-PROVISIONING TRIGGER ANALYSIS FOR**
23 **DEDICATED TRANSPORT?**

1 A. BellSouth has asserted that 81 transport routes satisfy the self-provisioning
2 trigger for DS3 service and for dark fiber. The routes are listed in
3 Attachment SWP-8 to Ms. Padgett's testimony.
4

5 **Q. WHAT WAS THE PROCESS THAT BELL SOUTH USED TO**
6 **IDENTIFY DEDICATED TRANSPORT ROUTES THAT IT**
7 **CLAIMS SATISFY THE SELF-PROVISIONING TRIGGER?**

8 A. Similar to her process for loops, BellSouth witness Padgett developed a
9 list of wire centers at which competitive providers have established
10 collocation arrangements based upon information that BellSouth gathered
11 in discovery and through examining its own collocation records.
12 BellSouth then assumed that transport routes exist between each and every
13 collocation arrangement within a given LATA for each individual carrier
14 for both the DS3 and dark fiber capacity levels.
15

16 **Q. DID BELL SOUTH PERFORM THE APPROPRIATE ANALYSIS**
17 **TO DEMONSTRATE THAT THE SELF-PROVISIONING**
18 **TRIGGERS WERE SATISFIED FOR DEDICATED TRANSPORT?**

19 A. No. BellSouth's analysis relies almost exclusively upon the "connect the
20 dots" approach, in which it simply asserts that a transport route exists
21 between each and every CLEC wire center, even if the CLEC itself denies
22 or does not indicate that it provides a dedicated transport route between
23 the two wire centers. I have reviewed the discovery responses that CLECs

1 have submitted in this proceeding. I have compared the list of transport
2 routes that CLECs have identified in their discovery responses with the
3 transport routes that BellSouth has identified as being served by those
4 CLECs. As I discuss below, as a result of this review, I have compiled a
5 list of transport routes – of the routes that BellSouth claims that satisfy the
6 self-provisioning trigger – that potentially could satisfy this trigger. See
7 Exhibit GJB-2. In Exhibit GJB-2, I have identified CLECs that BellSouth
8 claims are trigger candidates despite their statements that they do not
9 provide dedicated transport with the notation "NR." Even for those
10 CLECs that indicate they may be capable of providing transport,
11 BellSouth has not provided any evidence that those CLECs are self-
12 provisioning at the DS3 capacity level. These CLECs are indicated with a
13 “?” in Exhibit GJB-2.

14
15 **Q. WERE YOU ABLE TO REVIEW ANY OF THE CLEC DATA**
16 **RESPONSES FOR TRANSPORT?**

17 **A. Yes. I reviewed the responses of *** BEGIN CONFIDENTIAL *****
18
19
20
21
22
23

1

2

***** END**

3

CONFIDENTIAL *** as triggers on numerous routes based solely upon
BellSouth's own collocation records.

5

6

**Q. DID BELLSOUTH IDENTIFY CARRIERS AS SELF-
PROVISIONING DEDICATED TRANSPORT EVEN THOUGH
THE CARRIER DENIED SELF-PROVISIONING DEDICATED
TRANSPORT ALONG ANY ROUTE?**

10

A. Yes. * BEGIN CONFIDENTIAL *****

11

***** END CONFIDENTIAL ***** as trigger candidates

12

despite the fact that each of these carriers denied providing any transport

13

between BellSouth wire centers whatsoever.

14

15

**Q. ARE THERE TRANSPORT ROUTES THAT COULD QUALIFY
FOR THE SELF-PROVISIONING TRIGGER IF ALL OF THE
QUESTION MARKS BECAME REALITY?**

16

17

18

**A. Yes. There are 28 routes in Memphis that could conceivably meet the
self-provisioning trigger. See Exhibit GJB-2. These routes would satisfy
the self-provisioning trigger only if *** BEGIN CONFIDENTIAL *****

20

21

***** END CONFIDENTIAL**

22

***** each self-provisioning dedicated transport at the DS3 capacity level**

1 on these routes. Each of these CLECs would need to provide further
2 information to make this determination.
3

4 **Q. HOW DID YOU ARRIVE AT THE DETERMINATION THAT 28**
5 **DEDICATED TRANSPORT ROUTES MIGHT SATISFY THE**
6 **FCC'S SELF-PROVISIONING TRIGGER?**

7 **A.** I reviewed the CLEC discovery responses submitted in this proceeding,
8 and I compared those discovery responses with the dedicated transport
9 routes that BellSouth claims satisfy the self-provisioning trigger. As an
10 initial matter, as I stated above, I determined whether the carrier stated that
11 it provided dedicated transport. If the carrier denied providing dedicated
12 transport (such as ***** BEGIN CONFIDENTIAL *****

13 ***** END CONFIDENTIAL *****), then I removed those carriers
14 from BellSouth's route list. I then compared the list of routes along which
15 the carriers themselves stated that they provisioned dedicated transport
16 (for example, for ***** BEGIN CONFIDENTIAL ***** *******
17 **END CONFIDENTIAL *****) with the list of routes that BellSouth
18 claimed that carrier served. I then compared the capacity level at which
19 BellSouth claimed the carrier self-provisioned dedicated transport along
20 the route with the responses that the carriers themselves provided. After
21 performing each of these steps, I identified the routes where there are three
22 or more carriers that potentially self-provide dedicated transport along the
23 route at the capacity level listed therein.

1 **Q. IS IT APPROPRIATE FOR BELL SOUTH TO IDENTIFY A**
2 **ROUTE BASED SOLELY UPON ITS COLLOCATION RECORDS?**

3 A. No. BellSouth does not have enough information to make a determination
4 that a transport route satisfies the self-provisioning trigger based solely on
5 its collocation records. For example, collocation records do not indicate
6 whether the carrier actually is providing a transport service between those
7 collocations. Nor does BellSouth have information regarding the capacity
8 level at which the carrier provides service, if any, or whether the service is
9 self-provisioned or wholesale.

10

11 **Q. SHOULD BELL SOUTH HAVE INCLUDED ALL OF THESE**
12 **CLECS AS TRIGGERS BASED UPON YOUR REVIEW OF THEIR**
13 **DATA RESPONSES.**

14 A. No. It is inappropriate to include any of the CLECs that do not
15 acknowledge self-provisioning transport between the ILEC wire centers.
16 As I explained earlier in my testimony, "connecting the dots" between
17 CLEC collocation arrangements is not an appropriate means of identifying
18 self-provisioned transport routes.

19

20 **Q. HOW SHOULD THE TRA PROCEED WITH THE EVIDENCE**
21 **PROVIDED?**

22 A. The TRA should request further information from *** BEGIN

23 **CONFIDENTIAL**

*** END

1 **CONFIDENTIAL ***** to determine whether these CLECs are actually
2 self-provisioning dedicated transport between each wire center indicated
3 on Exhibit GJB-2 at the DS3 or dark fiber capacity level consistent with
4 the requirements of the *TRO*.

5
6 **III. CRITIQUE OF BELL SOUTH FLORIDA WHOLESALE TRIGGER**
7 **ANALYSES**

8 **A. HIGH CAPACITY LOOPS**

9 **Q. HAVE YOU REVIEWED BELL SOUTH'S TESTIMONY**
10 **CONCERNING THE APPLICATION OF THE WHOLESALE**
11 **TRIGGER TO HIGH CAPACITY LOOPS?**

12 **A. Yes, I have reviewed the testimony of Shelley W. Padgett beginning at**
13 **page 12.**

14
15 **Q. WHAT WERE BELL SOUTH'S CONCLUSIONS REGARDING**
16 **THE WHOLESALE TRIGGER ANALYSIS?**

17 **A. BellSouth has asserted that the same buildings that it claimed for the self-**
18 **provisioning trigger also satisfy the wholesale facilities trigger, with the**
19 **exception of several buildings that it claims do not satisfy the wholesale**
20 **trigger at the DS1 capacity level (BellSouth claimed only 33 locations for**
21 **DS1, compared to 37 for DS3). The customer specific locations are listed**
22 **in Attachment SWP-3 to Ms. Padgett's testimony.**
23

1 **Q. WHAT WAS THE PROCESS BELL SOUTH USED TO IDENTIFY**
2 **THE BUILDINGS THAT IT CLAIMS SATISFY THE**
3 **WHOLESALE TRIGGER?**

4 A. On page 13 of Ms. Padgett's testimony, Ms. Padgett lists the broad range
5 of sources that she used to identify carriers as wholesalers, including
6 CLEC discovery responses, BellSouth's "experience" in losing wholesale
7 contracts, carriers' advertisements, carriers' public statements, and analyst
8 and industry reports. Ms Padgett then continues with a creative assertion
9 that the carrier does not even have to be currently selling wholesale
10 service to qualify for the wholesale trigger. Instead, according to Ms.
11 Padgett, the carrier simply needs to express some sort of "willingness" to
12 provide wholesale services. Under BellSouth's view, everyone is a
13 wholesaler, whether they realize it or not.

14

15 **Q. DOES THE TRO ALLOW FOR CLECS TO BE DECLARED**
16 **WHOLESALEERS AGAINST THEIR WILL?**

17 A. No. The intent of the *TRO* and the wholesale triggers is to identify
18 locations where CLECs have made an affirmative business decision to
19 provide wholesale services, and have implemented the appropriate
20 network configurations and back office support systems to provide a
21 comparable service to that provided by the UNE that is being replaced. In
22 paragraph 337 of the *TRO*, the FCC provides the numerous requirements
23 that a CLEC must meet to be a wholesaler for the purposes of the trigger:

1 “where the relevant state commission determines that two or more
2 unaffiliated alternative providers...offer an equivalent wholesale loop
3 product at a comparable level of capacity, quality, and reliability, have
4 access to the entire multiunit customer premises, and offer the specific
5 type of high-capacity loop over their own facilities on a widely available
6 wholesale basis to other carriers desiring to service customers at that
7 location, then incumbent LEC loops at the same loop capacity level
8 serving that particular building will no longer be unbundled.” Clearly, the
9 FCC is intending to identify CLECs who have chosen to provide
10 wholesale service to the given locations, and have implemented the
11 necessary network and back-office systems to provide such services.

12
13 **Q. DID THE FCC REQUIRE EVIDENCE OF BACK OFFICE**
14 **SUPPORT SYSTEMS TO QUALIFY A CLEC AS A**
15 **WHOLESALE?**

16 **A. Yes. In making its determination that there is “scant evidence of**
17 **wholesale alternatives for serving customers at the DS1 level” in**
18 **paragraph 325, the FCC concluded that, “[t]he record indicates that even**
19 **competitive carriers that have deployed their own loop facilities do not**
20 **have the back office support systems in place that are necessary to offer**
21 **any excess capacity on a wholesale basis to other competitive LECs.” (see**
22 **footnote 958).**

23

1 **Q. WHY IS IT IMPORTANT THAT THE WHOLESALE TRIGGER**
2 **BE TREATED SEPARATELY FROM THE SELF-PROVISIONING**
3 **TRIGGER AND THAT CARE BE TAKEN TO AVOID**
4 **INCORRECTLY LABELING A CARRIER AS A WHOLESALE?**

5 A. Unlike the self-provisioning trigger, the wholesale trigger includes access
6 to loops at the DS1 capacity level, meaning that CLECs potentially could
7 be denied access to those loops if the wholesale trigger were met despite
8 the FCC's finding that it is practically impossible for a CLEC to
9 economically provision a standalone DS1 loop. DS1 loops are the primary
10 means of provisioning service to medium-size enterprise customers for
11 CLECs, and denial of DS1-loops would be a severe impediment to the
12 CLEC's ability to provide competitive services.

13

14 **Q. HAVE YOU BEEN ABLE TO NARROW THE NUMBER OF**
15 **BUILDINGS THAT POTENTIALLY COULD MEET THE**
16 **WHOLESALE TRIGGER?**

17 A. Yes. I have reviewed the CLECs' discovery responses and compared
18 those responses against the list of customer locations that BellSouth claims
19 satisfy the wholesale trigger. *See* Exhibit GJB-3. Based on this review,
20 there are two buildings that potentially satisfy the wholesale trigger for
21 DS3 loops and one building that may meet the wholesale trigger for DS1
22 loops.

23

1 Q. WHAT STEPS DID YOU TAKE TO CREATE THE LIST OF
2 BUILDINGS THAT POTENTIALLY SATISFY THE WHOLESALE
3 TRIGGER?

4 A. As I stated above, I reviewed the discovery responses submitted in this
5 proceeding. As a threshold matter, I determined whether the carrier stated
6 that it provided wholesale loops. If a carrier denied providing wholesale
7 loops, then I removed that carrier from BellSouth's list of customer
8 locations. I then determined whether the carrier listed in its discovery
9 responses the building that BellSouth claimed it served. I also reviewed
10 the capacity levels at which the carrier stated that it provided wholesale
11 service. At the end of these inquiries, there were two buildings that had
12 two or more CLECs that potentially provided wholesale service at the DS3
13 capacity level and one building that had two or more CLECs that
14 potentially provided wholesale service at the DS1 level. I did not have
15 access to the customer location lists (if they have been filed in this
16 proceeding) of *** BEGIN CONFIDENTIAL ***

17 *** END CONFIDENTIAL ***. If it
18 turns out that these carriers are offering wholesale loops at the relevant
19 capacity levels to the buildings BellSouth indicated, these numbers could
20 be slightly higher.

21

1 **Q. WHAT ADDITIONAL STEPS NEED TO BE TAKEN TO ENSURE**
2 **THAT THE BUILDINGS IDENTIFIED ACTUALLY WOULD**
3 **MEET THE WHOLESALE TRIGGER?**

4 **A. Similar to the self-provisioning trigger, the CLEC must be able to serve all**
5 **customers in the building, and must be willingly offering wholesale loops**
6 **at the building at the relevant capacity level to other CLECs.**
7 **Additionally, it must be validated that the CLEC's wholesale offering is**
8 **widely available to competitors on a nondiscriminatory basis, and that the**
9 **CLEC has the necessary back office systems to support the provision of**
10 **wholesale loops service.**

11
12 **Q. DID BELL SOUTH PROPERLY VERIFY THE AVAILABILITY OF**
13 **DS1 LOOP SERVICES ON A WHOLESALE BASIS FOR THE**
14 **BUILDINGS IT LISTED?**

15 **A. No. According to BellSouth witness Padgett, BellSouth made an**
16 **assumption that any existing fiber facility can provide DS1 level service,**
17 **and that the appropriate level of customer demand exists to support**
18 **standalone DS1 loops. This assumption is incorrect. DS1-level service**
19 **only can be provided when a fiber facility has been equipped with the**
20 **appropriate electronics, including an optical multiplexer with the**
21 **capability of provisioning DS1 channels. The FCC was very clear in its**
22 **requirement that wholesale service must be available at the specific**
23 **capacity level in order for the trigger to be satisfied.**

1

2 Q. DID THE FCC ANTICIPATE THAT A VERY SMALL NUMBER
3 OF BUILDINGS WOULD SATISFY THE WHOLESALE
4 TRIGGERS?

5 A. Yes. In paragraph 338 of the TRO, the FCC stated, "[w]e recognize that,
6 while the record indicates that there are presently a limited number of
7 alternative wholesale loop providers serving multiunit premises, we
8 anticipate that a competitive market will continue to *develop*." (emphasis
9 added).

10

11 B. DEDICATED TRANSPORT

12 Q. HAVE YOU REVIEWED BELLSOUTH'S TESTIMONY
13 CONCERNING THE APPLICATION OF THE WHOLESALE
14 TRIGGER TO DEDICATED TRANSPORT ROUTES?

15 A. Yes, I have reviewed the testimony of Shelley W. Padgett beginning on
16 page 29 of her testimony.

17

18 Q. WHAT WERE BELLSOUTH'S CONCLUSIONS REGARDING
19 THE WHOLESALE TRIGGER ANALYSIS?

20 A. BellSouth has asserted that the same number (81) routes it asserted meet
21 the self-provisioning trigger also meet the wholesale triggers for DS3 and
22 DS1, and that 75 routes meet the wholesale trigger for dark fiber. The

1 transport routes with the trigger CLECs are listed on Attachment SWP-8
2 to Ms. Padgett's testimony.

3

4 **Q. PLEASE DESCRIBE THE PROCESS BELL SOUTH USED TO**
5 **IDENTIFY DEDICATED TRANSPORT ROUTES THAT IT**
6 **CONTENDS SATISFY THE WHOLESALE PROVISIONING**
7 **TRIGGER.**

8 A. BellSouth used the same "connect the dots" approach to collecting data
9 that I described above in my critique of the self-provisioning trigger, and
10 used the same broad-brush approach to identify wholesale service
11 providers as it used for loops, essentially assuming without supporting
12 evidence that every competitive transport provider is providing wholesale
13 on each and every route.

14

15 **Q. DOES BELL SOUTH HAVE AN INCENTIVE TO BE OVERLY**
16 **BROAD IN ITS IDENTIFICATION OF WHOLESALE**
17 **TRANSPORT ROUTES?**

18 A. Yes. First, similar to the wholesale trigger for loops, routes that meet the
19 wholesale trigger also are eligible to have DS1-level transport delisted,
20 which is not possible under the self-provisioning trigger. Additionally,
21 since the wholesale trigger for dedicated transport only requires evidence
22 of two competing providers, as opposed to the three for the self-
23 provisioning trigger, BellSouth can increase the total number of routes to

1 be delisted if it can certify that the providers are wholesalers instead of
2 self-provisioners.

3

4 **Q. DOES BELLSOUTH'S ANALYSIS OF THE WHOLESALE**
5 **TRIGGERS FOR TRANSPORT SATISFY THE FCC**
6 **REQUIREMENTS?**

7 A. No. BellSouth's analysis of the wholesale trigger for transport
8 incorporates all of the flaws of the self-provisioning analysis mentioned
9 above. Additionally, similar to the wholesale loop triggers, BellSouth
10 declared ***** BEGIN CONFIDENTIAL ***** ***** END**
11 **CONFIDENTIAL ***** as wholesalers even though they specifically
12 denied providing wholesale services.

13

14 **Q. HOW MANY ROUTES MAY BE ELIGIBLE FOR THE**
15 **WHOLESALE TRIGGER?**

16 A. Based on my review of the CLEC data responses, the same 28 routes I
17 identified as potentially satisfying the self-provisioning trigger potentially
18 also qualify for the wholesale trigger.

19

20 **Q. WHAT FURTHER INFORMATION WOULD NEED TO BE**
21 **GATHERED TO MAKE A DETERMINATION AS TO WHETHER**
22 **ANY OF THESE 28 ROUTES ACTUALLY MEET THE**
23 **WHOLESALE TRIGGER?**

1 A. First, an evaluation must be made as to whether the CLECs are currently
2 equipped and operationally ready to provide dedicated transport on the
3 route at the relevant capacity level. Second, evidence must be gathered as
4 to whether the CLEC is willing and capable of immediately providing
5 wholesale service to another CLEC, including whether the CLEC has
6 implemented all of the necessary back office systems necessary to provide
7 such a service.

8

9 IV. **POTENTIAL DEPLOYMENT ANALYSIS FOR HIGH-CAPACITY**
10 **LOOPS AND DEDICATED TRANSPORT**

11 Q. PLEASE DESCRIBE WHAT IS MEANT BY POTENTIAL
12 DEPLOYMENT.

13 A. The potential deployment analysis essentially provides that BellSouth may
14 attempt to demonstrate that no impairment exists for loop locations or
15 transport routes even though the self-provisioning trigger has not been
16 satisfied.

17

18 Q. ARE DS1-CAPACITY LEVEL LOOPS AND TRANSPORT
19 ELIGIBLE FOR A POTENTIAL DEPLOYMENT CLAIM?

20 A. No. The FCC defined potential deployment as a theoretical substitute for
21 the self-provisioning trigger. As such, only those capacity levels eligible
22 for the self-provisioning trigger (DS3 and dark fiber) are eligible for
23 potential deployment claims.

1

2 **Q. CAN AN ILEC MAKE A GENERAL CLAIM FOR POTENTIAL**
3 **DEPLOYMENT, SUCH AS A CLAIM THAT NO IMPAIRMENT**
4 **EXISTS FOR ALL BUILDINGS SERVED OUT OF A WIRE**
5 **CENTER?**

6 A. No. The FCC's language is clear that potential deployment claims must
7 be location- or route-specific.

8

9 **Q. WHAT TYPE OF DEMONSTRATION MUST BELL SOUTH MAKE**
10 **TO SUCCESSFULLY PROVE NO IMPAIRMENT EXISTS AT A**
11 **LOCATION OR ROUTE EVEN THOUGH THE TRIGGERS HAVE**
12 **NOT BEEN MET?**

13 A. BellSouth must demonstrate *for each specific customer location and route*
14 that, contrary to the FCC's impairment determination, multiple
15 competitive providers would be able to overcome the significant
16 operational and economic barriers identified by the FCC and still be able
17 to compete successfully. BellSouth therefore must demonstrate that the
18 competitive providers would earn sufficient revenues relative to their
19 significant fixed and sunk costs of providing dark fiber loops or transport,
20 and fewer than two DS3s of traffic for loops or 12 DS3s of traffic for
21 transport (the maximum amount of capacity that CLECs may purchase as
22 UNEs) or dark fiber loops and dedicated transport to cover the costs.
23 Again, this demonstration must be location-specific.

1

2 **Q. WHAT ARE THE FACTORS THAT BELL SOUTH MUST**
3 **DEMONSTRATE TO THE TRA TO SATISFY THE POTENTIAL**
4 **DEPLOYMENT TEST FOR HIGH CAPACITY LOOPS TO A**
5 **SPECIFIC CUSTOMER LOCATION?**

6 **A. In paragraph 335 of the *TRO*, the FCC requires that “when conducting its**
7 customer location specific analyses, a state must consider and may also
8 find no impairment at a particular customer location even when this
9 trigger has not been facially met *if* the state commission finds that no
10 material economic or operational barriers at a customer location preclude
11 competitive LECs from economically deploying loop transmission
12 facilities to that particular customer location at the relevant loop capacity
13 level. In making a determination that competitive LECs *could*
14 economically deploy loop transmission facilities at that location at the
15 relevant capacity level, the state commission must consider numerous
16 factors affecting multiple CLECs’ ability to economically deploy facilities
17 at that particular customer location.” In the *TRO*, the FCC then lists the
18 following factors:

- 19 • Evidence of alternative loop deployment at that particular customer
20 location;
- 21 • Local engineering costs of building and using transmission
22 facilities;
- 23 • The cost of underground or aerial laying of fiber or copper;
- 24 • The cost of equipment needed for transmission;

- 1 • Installation and other necessary costs involved in setting up
- 2 service;
- 3 • Local topography such as hills and rivers;
- 4 • Availability of reasonable access to rights-of-way;
- 5 • Building access restrictions/costs; and
- 6 • Availability/feasibility of similar quality/reliability alternative
- 7 transmission technologies at that particular location.

8 TRO ¶ 335.

9
10
11 **Q. WHAT ARE THE FACTORS THAT BELL SOUTH MUST**

12 **DEMONSTRATE TO THE TRA TO SATISFY THE POTENTIAL**

13 **DEPLOYMENT TEST FOR DEDICATED TRANSPORT ROUTES?**

14 A. For transport, the FCC also found that actual deployment is the best

15 indicator of impairment, but noted that a state commission must also

16 consider potential deployment for a particular route "that it finds is

17 suitable for 'multiple, competitive supply,' but along which [the actual

18 deployment] trigger is not facially satisfied." *Id.* ¶ 410. The factors that

19 the TRA must evaluate for transport are similar to those for loops and

20 include the following characteristics:

- 21 • Local engineering costs of buildings and utilizing transmission
- 22 facilities;
- 23 • The cost of underground or aerial laying of fiber;
- 24 • The cost of equipment needed for transmission;
- 25 • Installation and other necessary costs involved in setting up
- 26 service;
- 27 • Local topography such as hills and rivers;

- Availability of reasonable access to rights-of-way;
- The availability or feasibility of alternative transmission technologies with similar quality and reliability;
- Customer density or addressable market; and
- Existing facilities-based competition.

TRO ¶ 410.

Each of these characteristics must be evaluated in the potential deployment analysis. For that reason, an ILEC that claims that CLECs are not impaired without access to UNEs in serving a specific route will need to introduce evidence with respect to each factor that demonstrates that the factor alone, or in combination with others, does not operate as a barrier to the CLECs' ability to deploy the facilities in question.

Q. WITH RESPECT TO BOTH HIGH CAPACITY LOOPS AND DEDICATED TRANSPORT, WHAT SORT OF EVIDENCE MUST BELL SOUTH OFFER WITH RESPECT TO CAPACITY LEVELS?

A. Any evidence an ILEC presents on potential deployment necessarily will have to address the limitations on the availability of UNEs that are *already built* into the FCC's new unbundling rules. Thus, with respect to loops, BellSouth's factual showing and analysis concerning potential deployment needs to explain how CLECs are not impaired in their ability to deploy dark fiber loops or up to two DS3 loops at a specific customer location. TRO ¶ 324. Similarly, with respect to transport, BellSouth's analysis must reflect the FCC's decision that CLECs are impaired without unbundled

1 access to dark fiber transport and twelve or fewer DS3s of transport along
2 any given transport route. *TRO* ¶ 388.

3
4 **Q. DO YOU THINK IT IS LIKELY THAT MOST ILECS WOULD BE**
5 **ABLE TO MAKE THIS SORT OF SHOWING?**

6 A. It is difficult to see how an ILEC would make such a detailed and site-
7 specific showing. The FCC already has restricted the availability of loop
8 and transport UNEs by placing strict limits on the capacity levels (2 DS3s
9 for loops, 12 DS3s for transport) that any individual CLEC may obtain at a
10 given location. The record before the FCC contained overwhelming
11 evidence, summarized in the *TRO*, that CLECs remain impaired without
12 the limited access granted by the *TRO* to UNEs at these lower-capacity
13 levels, because “the potential revenue stream associated” with lower-
14 capacity facilities “is many times smaller than that” of a higher-capacity
15 facility. *TRO* ¶ 320 n.945. These lower revenues are highly unlikely to
16 cover the high fixed and sunk costs of facilities deployment, *id.*, and
17 compound the “other economic and operational barriers” that CLECs face
18 in deploying their own facilities. *TRO* ¶ 320 & n. 946; *see, e.g., TRO* ¶¶
19 205-07, 298-99 & n.860, 302-06, 324-27 & n.954, 360, 370-71, 376, 381-
20 93, 399. Moreover, loop economics depend upon certain best-case
21 assumptions – such as the existence of a fiber transport ring with an access
22 point (that is, a point where a lateral line may be attached to an add/drop
23 multiplexer to allow interconnection between the loop facility and the

1 access to dark fiber transport and twelve or fewer DS3s of transport along
2 any given transport route. *TRO* ¶ 388.

3
4 **Q. DO YOU THINK IT IS LIKELY THAT MOST ILECS WOULD BE**
5 **ABLE TO MAKE THIS SORT OF SHOWING?**

6 **A.** It is difficult to see how an ILEC would make such a detailed and site-
7 specific showing. The FCC already has restricted the availability of loop
8 and transport UNEs by placing strict limits on the capacity levels (2 DS3s
9 for loops, 12 DS3s for transport) that any individual CLEC may obtain at a
10 given location. The record before the FCC contained overwhelming
11 evidence, summarized in the *TRO*, that CLECs remain impaired without
12 the limited access granted by the *TRO* to UNEs at these lower-capacity
13 levels, because "the potential revenue stream associated" with lower-
14 capacity facilities "is many times smaller than that" of a higher-capacity
15 facility. *TRO* ¶ 320 n.945. These lower revenues are highly unlikely to
16 cover the high fixed and sunk costs of facilities deployment, *id.*, and
17 compound the "other economic and operational barriers" that CLECs face
18 in deploying their own facilities. *TRO* ¶ 320 & n. 946; *see, e.g.*, *TRO* ¶¶
19 205-07, 298-99 & n.860, 302-06, 324-27 & n.954, 360, 370-71, 376, 381-
20 93, 399. Moreover, loop economics depend upon certain best-case
21 assumptions – such as the existence of a fiber transport ring with an access
22 point (that is, a point where a lateral line may be attached to an add/drop
23 multiplexer to allow interconnection between the loop facility and the

1 fiber ring) close to the building in question – that may not be satisfied at
2 any given location. Finally, no one seriously contests that “build it and
3 they will come” is anything but a failed entry strategy, and that CLECs
4 therefore need access to UNEs or wholesale capacity at some minimum
5 threshold level in order to obtain a customer base sufficient to support the
6 building of their own facilities.

7 Therefore, to demonstrate potential deployment in accordance with
8 the *TRO*, the ILEC would have to show – for each particular building or
9 transport route – that the revenues available to a CLEC at that location
10 would be sufficient to overcome the fixed and sunk costs of constructing a
11 facility at that location (taking into account all the location-specific
12 variables listed by the FCC) that affect those costs and revenues. In
13 addition, the ILEC’s evidence also would need to show that no other
14 economic and operational barriers exist for the particular location or route
15 in question. The inherent limitations of fixed, low-capacity facilities to
16 generate adequate revenues to cover the high costs of loop deployment
17 make it highly unlikely that any ILEC could make the requisite showing
18 for any individual location or route. And the universal nature of entry
19 barriers such as gaining necessary rights of way, gaining adequate
20 building access, deploying the facilities, and convincing customers to
21 accept the delays inherent in service provided over new facilities, make it
22 even more doubtful that ILECs could provide evidence for *specific*
23 locations that would overcome the FCC’s findings of impairment and

1 demonstrate instead that there could be "multiple competitive supply" so
2 that competition can be effectively served by denying CLECs access to
3 unbundled facilities at locations where CLECs have not found it
4 economical or desirable to deploy their own facilities.

5
6 **V. CRITIQUE OF BELL SOUTH FLORIDA POTENTIAL**
7 **DEPLOYMENT ANALYSIS**

8 **A. HIGH CAPACITY LOOPS**

9 **Q. HAVE YOU REVIEWED BELL SOUTH'S TESTIMONY**
10 **CONCERNING THE APPLICATION OF THE POTENTIAL**
11 **DEPLOYMENT ANALYSIS TO HIGH CAPACITY LOOPS?**

12 **A. Yes, I have reviewed the testimony of Aniruddha (Andy) Banerjee.**

13
14 **Q. WHAT WERE THE CONCLUSIONS OF THE POTENTIAL**
15 **DEPLOYMENT ANALYSIS AS PROVIDED BY BELL SOUTH?**

16 **A. BellSouth, through Dr. Banerjee's testimony, has asserted that 225**
17 **customer locations satisfy the potential deployment analysis for high**
18 **capacity loops.**

19
20 **Q. DO YOU BELIEVE IT IS CREDIBLE THAT THERE ARE**
21 **ALMOST SEVEN TIMES MORE BUILDINGS THAT**
22 **BELL SOUTH CLAIMS QUALIFY FOR POTENTIAL**
23 **DEPLOYMENT THAN BELL SOUTH IDENTIFIED FOR SELF-**
24 **PROVISIONING?**

1 A. No. The current scope of CLEC networks represents more than 10 years
2 of laborious efforts by individual companies, who have pieced together
3 their networks building by building, working through the myriad issues
4 facing companies that perform construction tasks in major city areas. At
5 most of those buildings for which some form of service is being provided,
6 installation of CLEC facilities were most likely economically justified
7 based upon the provision of OC(n) level services. Also, it is likely that the
8 remaining buildings (the ones not served by CLEC facilities) either are not
9 as attractive due to the type of customers in the building, or the
10 competitive providers have been dissuaded from entry due to other
11 barriers such as building access or other building-specific issues. Finally,
12 in the current financial environment, competitive carriers do not have the
13 same level of available financing as they did in the previous years to
14 justify new construction. It defies the realities of today's
15 telecommunications marketplace – as well as basic common sense – to
16 believe that, with all of these considerations, CLECs would be able to
17 economically build out to even a small percentage of the buildings listed
18 by BellSouth for the sole purpose of provisioning only one or two DS3s of
19 capacity or providing dark fiber, let alone six times that number of
20 buildings.

21
22 **Q. PLEASE DESCRIBE, BASED UPON WITNESS BANERJEE'S**
23 **TESTIMONY, THE PROCESS BELL SOUTH USED TO**

1 **DETERMINE THAT 225 BUILDINGS SATISFIED THE**
2 **POTENTIAL DEPLOYMENT ANALYSIS FOR HIGH CAPACITY**
3 **LOOPS.**

4 A. Mr. Banerjee developed a list of buildings that had a monthly
5 “telecommunications spend” of \$5,000 or more, or \$60,000 annually. To
6 obtain an estimate of building spending levels, Mr. Banerjee used data it
7 obtained from TNS Telecoms, a third-party market research firm. For
8 each building, Mr. Banerjee then performed what he described as a net
9 present value analysis on each building based upon hypothetical cost
10 assumptions. Buildings that had a positive net present value based upon
11 his assumptions were then presumed to pass the potential deployment
12 analysis.

13
14 Q. **DO YOU BELIEVE THAT THE PROCESS BELL SOUTH USED**
15 **COMPLIES WITH THE STANDARDS THE FCC SET FORTH IN**
16 **THE *TRO*?**

17 A. No. Even before any analysis of the cost or revenue information provided
18 by BellSouth is considered, it appears that BellSouth simply is performing
19 the wrong analysis. Instead of identifying those buildings for which the
20 costs of providing 2 DS3 loops is less than the expected revenues,
21 BellSouth appears to have identified buildings for which it believes there
22 is a demand for at least 3 DS3s. These locations are not relevant to the

1 analysis, as the FCC has already made the determination that no
2 impairment exists for locations that demand 3 or more DS3s.

3

4 **Q. WHAT IS THE BASIS OF YOUR BELIEF THAT BELL SOUTH IS**
5 **IDENTIFYING BUILDINGS THAT HAVE DEMAND FOR AT**
6 **LEAST 3 DS3'S WORTH OF CAPACITY?**

7 **A. Typically, the monthly revenue associated with an individual DS3 loop is**
8 **in the range of \$1,000 to \$2,000 depending upon how long a commitment**
9 **a customer makes. If it is assumed that a CLEC will receive at least**
10 **\$5,000 per month, that is indicative of at least 3 DS3s, for which the FCC**
11 **has already concluded that sufficient revenue exists to recover the cost of**
12 **loop deployment.**

13

14 **Q. CAN YOU PROVIDE AN EXAMPLE OF HOW AN**
15 **APPROPRIATE ANALYSIS SHOULD HAVE BEEN**
16 **PERFORMED?**

17 **A. Yes. Assuming a CLEC could expect to receive \$15,000 per year in**
18 **revenue for a DS3 loop, the maximum revenue it could receive for two**
19 **DS3s would be \$30,000 per year. The potential deployment analysis**
20 **would then attempt to locate buildings such that a CLEC's annualized cost**
21 **of deploying loops, as defined through the FCC's factors, does not exceed**
22 **\$30,000.**

23

1 **Q. APART FROM THE MISGUIDED APPROACH AND LACK OF**
2 **GRANULARITY IN BELL SOUTH'S ANALYSIS, WHAT ARE**
3 **SOME OF THE SPECIFIC CRITICISMS YOU HAVE OF**
4 **BELL SOUTH'S APPROACH ON LOOP POTENTIAL**
5 **DEPLOYMENT?**

6 A. I have several specific criticisms. First, BellSouth does not analyze any of
7 the building-specific factors listed in the *TRO* for any of the buildings it
8 has identified. Second, BellSouth's use of a building's "total telecom
9 spend" is an inappropriate means of identifying potential buildings, and it
10 is also inappropriate to assume the "total telecom spend" of a building as
11 potential revenue a CLEC could expect to receive. Third, the cost figures
12 BellSouth relies upon are flawed, in that they assume practically no cost of
13 fiber construction. Finally, several key assumptions used in Mr
14 Banerjee's Net Present Value analysis, notably the project life and
15 discount rates, are inappropriate and have the result of inflating the
16 resulting net present value of each building location.

17
18 **Q. DO YOU BELIEVE THAT THE PROCESS BELL SOUTH USED**
19 **COMPLIES WITH THE GUIDANCE THE FCC PROVIDED IN**
20 **THE *TRO*?**

21 A. No. BellSouth's process is the exact opposite of what the FCC specified in
22 the *TRO*. The FCC made clear that, with respect to both the triggers and
23 to potential deployment analysis, "a more granular analysis should be

1 applied on a *customer-by-customer location basis*.” *TRO* ¶ 328 (emphasis
2 added). It bears repeating that this granular analysis was to be conducted
3 on a building-by-building basis in order to identify those limited instances
4 in which multiple alternative loop deployment was possible even though it
5 had not yet taken place. BellSouth, however, has attempted to “de-
6 granularize” this analysis by instead developing a list of generic criteria
7 that it then applied equally to hundreds of customer locations. But these
8 generic criteria do not address or even take into account, the specific
9 factors identified in the *TRO*. For example, two factors that the *TRO*
10 requires to be evaluated for each building are (1) availability of rights-of-
11 way and (2) building access restrictions; BellSouth’s testimony does not
12 evaluate these factors for even a single building on its potential
13 deployment list.

14
15 **Q. IS BELL SOUTH’S USE OF A BUILDING’S ESTIMATED TOTAL**
16 **ANNUAL TELECOMMUNICATIONS SPENDING, IN THIS**
17 **INSTANCE \$60,000, AN APPROPRIATE WAY OF IDENTIFYING**
18 **BUILDINGS FOR THE POTENTIAL DEPLOYMENT ANALYSIS?**

19 **A.** No. The appropriate approach should be to determine whether a building
20 has sufficient demand for DS3 or dark fiber loops to allow for multiple,
21 competitive supply into the building. A large building (or even a single
22 customer in that building) easily could surpass the \$60,000 threshold
23 without having any demand whatsoever for DS3 or dark fiber loops

1 BellSouth should have the capability based upon its own customer records
2 to determine which buildings actually have a demand for the specific
3 capacity levels, the number of which should be significantly less than the
4 quantity meeting the \$60,000 threshold.

5
6 **Q. IS IT APPROPRIATE TO USE THE \$60,000 ESTIMATED TOTAL**
7 **BUILDING TELECOMMUNICATIONS SPENDING AMOUNT AS**
8 **A POTENTIAL REVENUE STREAM CLECS COULD EXPECT TO**
9 **RECEIVE TO OFFSET THEIR COST OF LOOP**
10 **CONSTRUCTION?**

11 **A.** No. Consistent with the capacity-specific nature of the analysis, the only
12 revenues that should be considered are those specific to the building of
13 individual DS3s or dark fiber loops. This is consistent with the FCC's
14 determination as mentioned above that "the potential revenue stream
15 associated" with lower-capacity facilities "is many times smaller than
16 that" of a higher-capacity facility. *TRO* ¶ 320 n.945. Notably, the view
17 here must be of a carrier that has the opportunity to obtain access to UNEs
18 (otherwise an impairment review is unnecessary). Thus, since a
19 requesting carrier may only obtain up to 2 DS3s at UNE rates per
20 customer location, the question is whether that carrier – not a carrier
21 seeking to serve a larger demand – could afford to self-deploy its own
22 facilities to serve at that level. Accordingly, any reference to a "total
23 building revenue" is inappropriate. That figure certainly would contain

1 revenues other than those for the specific one or two DS3s that a
2 requesting carrier could obtain as a UNE, and can be expected to include
3 potential OC(n) circuits, long distance service, and data services, and, as a
4 result, improperly skews such analysis. If the total revenues for such
5 services were to be included in an potential deployment analysis, without
6 access to specific revenues available from specific uncommitted customers
7 in a location, the TRA only could anticipate that they would generate
8 average revenues for services provided over such facilities. BellSouth
9 does not offer proof of either. Moreover, if total revenues from the use of
10 a loop are to be considered, then the analysis must consider all of the costs
11 of providing all services over such facilities. BellSouth also fails to
12 produce this evidence. Moreover, this revenue figure does not consider
13 that enterprise customers in commercial buildings are generally tied up in
14 long-term contracts that make them economically unavailable for a
15 competitive provider.

16 Since loops are used as an input to other services and represent
17 only a small portion of the facilities needed to provide entire high capacity
18 services to enterprise customers, it would be both reasonable and
19 consistent to measure the costs of provisioning such facilities against the
20 revenues that a CLEC could earn by providing DS3s or dark fiber as a
21 wholesale offering. It is also consistent with CLEC "build or buy"
22 analyses for an individual building. For example, a CLEC's decision to
23 replace an existing special access line into a building with the CLEC's

1 own DS3 loop is driven solely by whether the cost to provision its own
2 loop is less than the cost of purchasing the special access line.

3

4 **Q. DOES DR. BANERJEE'S ANALYSIS USE ANY BUILDING**
5 **SPECIFIC COSTS FOR HIS POTENTIAL DEPLOYMENT**
6 **ANALYSIS?**

7 A. No. Dr. Banerjee's analysis uses two primary cost sources for his
8 analysis: hypothetical network cost information provided by BellSouth
9 witness Wayne Gray, and hypothetical expense information based upon a
10 proprietary BellSouth marketing model called the BellSouth Analysis of
11 Competitive Entry ("BACE").

12

13 **Q. IS THE COST INFORMATION PROVIDED BY BELL SOUTH**
14 **WITNESS GRAY MEANINGFUL IN THE CONTEXT OF THE**
15 **FCC'S POTENTIAL DEPLOYMENT REQUIREMENTS?**

16 A. No. Mr. Gray provided cost information that was used in developing
17 TELRIC rates. It is important to remember that, unlike typical costing
18 proceedings used to establish UNE rates, the potential deployment
19 analysis requires an evaluation of costs specific to CLECs, who do not
20 have BellSouth's scale, access to buildings, and access to rights-of-way.

21

1 **Q. WHAT ARE THE KEY ELEMENTS OF THE NETWORK COST**
2 **INFORMATION AS PRESENTED BY BELL SOUTH WITNESS**
3 **GRAY?**

4 A Mr Gray provides hypothetical network cost information for the optical
5 electronics used to derive a DS3 loop, and a hypothetical per-foot cost
6 estimate of fiber extension.

7
8 **Q. PLEASE EXPLAIN WHY YOU DO NOT BELIEVE IT IS**
9 **REASONABLE TO DETERMINE POTENTIAL DEPLOYMENT**
10 **BASED UPON A HYPOTHETICAL COST FACTOR BASED UPON**
11 **DISTANCE BETWEEN CLEC FACILITIES AND SPECIFIC**
12 **BUILDINGS.**

13 A. The use of a hypothetical per-foot cost factor as proposed by BellSouth is
14 flawed because does not take into consideration the location-specific
15 obstacles that might be located between the CLEC's facilities and the
16 building, especially in large city areas. Numerous obstacles and delays
17 almost always occur for projects that involve digging up city streets, and
18 the costs of such endeavors often accumulate to levels much higher than
19 originally expected. Probably the most famous recent example of this is
20 the "Big Dig", a highway renovation project that was recently completed
21 in Boston. That project, which replaced only 7.5 miles of highway, ended
22 up taking 15 years and costing in excess of \$14 billion, \$10 billion more
23 than originally expected. While this is obviously an extreme example, it

1 demonstrates that construction and installation of facilities over even short
2 distances in city areas can present much greater economic barriers than
3 will constructing facilities over longer distances in rural areas.

4
5 **Q. FROM A PRACTICAL PERSPECTIVE, DOES THE COST**
6 **INFORMATION THAT MR. GRAY PROVIDES MAKE SENSE IN**
7 **THE CONTEXT OF POTENTIAL DEPLOYMENT?**

8 A. No. Mr. Gray's analysis assumes a total installed investment of \$6.60 per
9 foot for a 100 strand fiber, including conduit and pole cost factors. This
10 means that, for a 1,000 foot build, BellSouth is assuming less than \$7,000
11 of construction costs, which reflects practically no construction at all, as
12 construction projects of this type can often run into the hundreds of
13 thousands of dollars depending upon the circumstances.

14
15 **Q. PLEASE COMMENT ON THE NET PRESENT VALUE ANALYSIS**
16 **PERFORMED BY DR. BANERJEE.**

17 A. Although Dr. Banerjee appropriately uses a net present value analysis to
18 evaluate the economic viability, the assumptions he uses in the analysis
19 are not reflective of the requirements of the FCC's potential deployment
20 analysis. First, as mentioned above, all of the inputs, both revenue and
21 cost, are hypothetical. Outside of the estimated distance between a CLEC
22 and the building, there is not one building-specific analysis for any of the
23 nine criteria outlined by the FCC. Second, Dr. Banerjee chooses two

1 unrealistic assumptions for the net present value analysis, both of which
2 increase the resulting net present value for each building
3

4 **Q. PLEASE DESCRIBE THE FIRST UNREALISTIC ASSUMPTION**
5 **DR. BANERJEE USES IN HIS ANALYSIS.**

6 A. Dr. Banerjee choose a 10 year project life for his analysis, meaning that he
7 is assuming that the CLEC will have 10 years of revenue from customers
8 in the building to recover the up front capital costs and ongoing expenses
9 related to the loop. Obviously, the longer the project life, the more
10 revenue there is available to offset the costs.

11

12 **Q. BASED UPON YOUR EXPERIENCE, IS 10 YEARS AN**
13 **APPROPRIATE PERIOD TO ASSUME A CLEC WILL BE ABLE**
14 **TO RETAIN A CUSTOMER?**

15 A. No. Typically, customers are unwilling to commit to contracts greater
16 than 5 years, especially as prices of telecommunications services tend to
17 decline over time due to competition and technological innovation. In my
18 experience, it would be unlikely for a CLEC to allocate capital to a project
19 that did not produce a positive net present value until the 9th or 10th year.

20

21 **Q. WHAT IS THE SECOND UNREALISTIC ASSUMPTION USED**
22 **IN DR. BANERJEE'S NPV ANALYSIS?**

1 A Dr. Banerjee uses a discount rate of only 10.8%. The discount rate is
2 supposed to reflect the risk-adjusted cost-of-capital of the company
3 making the investment, and is used to reduce the weighting of cash flows
4 farther out into the future for companies with higher risk. The practical
5 effect of a lower discount rate is that cash flows in later years will have
6 more bearing than they would if a higher discount rate were used, and thus
7 provides for a higher net present value.

8
9 **Q. WHY DO BELIEVE THAT A DISCOUNT RATE OF 10.8% IS**
10 **UNREASONABLE FOR A CLEC?**

11 A. This discount rate is approximately the same as that ordered of BellSouth
12 in the most recent Florida UNE proceeding, and actually significantly
13 lower than that proposed by BellSouth for itself in those proceedings. As
14 BellSouth is an incumbent local exchange carrier, it's investments are
15 perceived to be less risky relative to CLECs, especially after the numerous
16 CLEC bankruptcies over the past several year.

17
18 **Q. HOW DID BELL SOUTH REPRESENT ITS OWN COST OF**
19 **CAPITAL IN THE PREVIOUS UNE PROCEEDING?**

20 A. In Florida Docket No. 990649-TP, BellSouth witness Billingsley testified
21 that the 11 25% cost of capital is BellSouth had proposed is reasonable
22 and conservative given his estimate that BellSouth's actual cost of capital
23 ranges from 14.61% to 14.91%.

1

2 **Q. ARE YOU AWARE OF ANY OTHER ANALYSES THAT**
3 **PRESENT A MORE REALISTIC DEPICTION OF THE COSTS**
4 **AND NECESSARY REVENUES FOR A CLEC TO EXTEND ITS**
5 **NETWORK INTO A NEW BUILDING?**

6 A. Yes. On November 25, 2002, AT&T filed a study with the FCC, in
7 conjunction with the FCC's Triennial Review proceedings, which
8 analyzes the costs and required revenues necessary to justify extending a
9 typical CLEC's network to a new building. The study is included as
10 Exhibit GJB-4 to my testimony. I have reviewed the AT&T study and,
11 based on my experience, I find it presents a more thorough and realistic
12 analysis of the costs that would be encountered and the revenues that
13 would be considered by a CLEC in determining whether to extend a
14 typical CLEC network into a new building than the analysis used by
15 BellSouth in this case.

16

17 **Q. WHAT WERE THE CONCLUSIONS OF THE AT&T STUDY AS**
18 **IT PERTAINS TO UNBUNDLED LOOPS?**

19 A. The study concluded that CLECs generally need to be able to provision at
20 least 3 DS3s into a given building before the cost of constructing the loops
21 can be recovered. This is consistent with the FCC's conclusion that no
22 impairment exists for OC(3) and above loops.

23

1 **Q. HOW DO YOU PROPOSE THAT THE AT&T STUDY BE USED**
2 **BY THE TRA IN EVALUATING BELLSOUTH'S POTENTIAL**
3 **ANALYSIS?**

4 A. The AT&T study supports the position that it is generally not economic
5 for CLECs to build for the provision of a single DS3 or dark fiber loop to
6 a building, and that any building for which BellSouth claims potential
7 deployment must be treated as a unique exception, which must be
8 supported by a full, building specific analysis.

9

10 **Q. DID BELLSOUTH PROVIDE EVIDENCE OF ALTERNATIVE**
11 **LOOP DEPLOYMENT FOR THE 225 BUILDINGS ON ITS LIST?**

12 A. Dr. Banerjee did not indicate which of the buildings on the list had any
13 loop deployment, and if so, how much

14

15 **Q. SHOULD ANY OF THE BUILDINGS LISTED BY BELLSOUTH**
16 **QUALIFY FOR POTENTIAL DEPLOYMENT BASED UPON**
17 **BELLSOUTH'S SHOWING IN THIS CASE?**

18 A No. BellSouth's analysis does not meet any of the FCC's criteria for items
19 the TRA must evaluate, and therefore this TRA should find that BellSouth
20 has not satisfied the potential deployment analysis for any of the buildings
21 listed in the attachments to the Banerjee testimony

22

1 **Q. HOW SHOULD BELL SOUTH HAVE DONE ITS POTENTIAL**
2 **DEPLOYMENT ANALYSIS FOR HIGH CAPACITY LOOPS?**

3 A. BellSouth should have performed an individual discounted cash flow
4 analysis using specific cost and potential revenue information for each
5 building instead of hypothetical values. The analysis would provide
6 evidence of alternate loop deployment for each building, and would
7 specifically address each of the FCC's points. The discounted cash flow
8 analysis would use project lives and depreciation rates that a CLEC
9 actually would use for itself if it were really analyzing whether to extend
10 its network out to a new building

11

12 **B. DEDICATED TRANSPORT**

13 **Q. HAVE YOU REVIEWED BELL SOUTH'S TESTIMONY**
14 **CONCERNING THE APPLICATION OF THE POTENTIAL**
15 **DEPLOYMENT ANALYSIS TO DEDICATED TRANSPORT?**

16 A. Yes, I have reviewed the testimony of Dr. Banerjee on this matter.

17

18 **Q. WHAT WERE THE CONCLUSIONS OF THE POTENTIAL**
19 **DEPLOYMENT ANALYSIS AS PROVIDED BY BELL SOUTH?**

20 A. BellSouth has asserted that 21 transport routes satisfy the potential
21 deployment trigger, in addition to the routes that it claimed satisfied the
22 self-provisioning and wholesale triggers.

23

1 **Q. PLEASE DESCRIBE THE PROCESS BELLSOUTH USED TO**
2 **DETERMINE THAT THESE 21 TRANSPORT ROUTES SATISFY**
3 **THE POTENTIAL DEPLOYMENT ANALYSIS FOR DEDICATED**
4 **TRANSPORT?**

5 A. Similar to the analysis used for loops, Dr Banerjee performed a net
6 present value analysis to compare the potential revenues or cost savings
7 achieved by CLECs to their cost of building out to a new wire center and
8 establishing a collocation arrangement.

9
10 **Q. DO YOU BELIEVE THAT BELLSOUTH'S POTENTIAL**
11 **DEPLOYMENT ANALYSIS FOR DEDICATED TRANSPORT IS**
12 **PROPER?**

13 A. No. Similar to the analysis for loops, Dr. Banerjee did not perform a
14 route-specific analysis for each route that he claims satisfies the FCC's
15 potential deployment criteria Dr. Banerjee's analysis also is failed
16 because it overstates the revenue associated with the buildout, and relies
17 upon hypothetical cost assumptions that ignore the factors laid out by the
18 FCC. Finally, Dr. Banerjee uses the same flawed assumptions for his net
19 present value analysis as used for loops as well.

20
21 **Q. HOW DOES BELLSOUTH OVERSTATE THE REVENUE**
22 **ASSOCIATED WITH A BUILDOUT?**

1 A. On page 18 of his testimony, Dr. Banerjee describes his approach to
2 estimating the potential revenue a CLEC could receive from extending its
3 network. Instead of determining the potential revenue for a specific route
4 between two wire centers, Dr. Banerjee assumes that the revenue for his
5 analysis is equal to the total spending of the CLEC for all transport,
6 including special access, from the new wire center to all other wire
7 centers, not just a single wire center. If Dr. Banerjee is including revenue
8 between more than two wire centers in his analysis, then he is overstating
9 the potential revenue associated with an individual route.

10

11 **Q. HOW DOES DR. BANERJEE'S POTENTIAL DEPLOYMENT**
12 **ANALYSIS FOR DEDICATED TRANSPORT**
13 **INAPPROPRIATELY RELY UPON HYPOTHETICAL COST**
14 **INFORMATION?**

15 A. Similar to loops, Dr. Banerjee's analysis relies upon hypothetical cost
16 information provided by BellSouth witness Wayne Gray.

17

18 **Q. DOES MR. GRAY'S TESTIMONY PROVIDE REALISTIC**
19 **CONSTRUCTION COST ESTIMATES?**

20 A No. Similar to Loops, Mr. Gray assumes a per-foot cost of \$6.60 to
21 extend fiber to a new wire center, which, like loops, basically assumes no
22 real construction whatsoever. Using Mr. Gray's numbers, a 1,000 foot
23 extension would cost the CLEC only \$6,600. This dollar amount is not

1 representative of costs that would be associated with a real construction
2 project, which often can run into the hundreds of thousands of dollars.

3

4 **Q. DOES DR. BANERJEE USE THE SAME FLAWED**
5 **ASSUMPTIONS IN HIS NET PRESENT VALUE ANALYSIS THAT**
6 **HE USED IN HIS LOOP ANALYSIS?**

7 A. Yes. Dr. Banerjee uses the same 10 year project life and 10.8% discount
8 rate that I criticized in the loop section above.

9

10 **Q. WHAT DO YOU CONCLUDE ABOUT BELL SOUTH'S**
11 **POTENTIAL DEPLOYMENT ANALYSIS FOR DEDICATED**
12 **TRANSPORT?**

13 A. I have concluded that BellSouth has not satisfied its burden of proving
14 potential deployment at any capacity level for any of the routes for which
15 it seeks such a finding. Similar to my recommendation for loops,
16 BellSouth must provide a net-present value analysis that reflects the route-
17 specific analysis required by the FCC. BellSouth only must consider the
18 incremental revenues associated with a given route, and also must use
19 more reasonable assumptions related to project life and discount rates in
20 performing its net present value analysis.

21

1 **VI. TRANSITIONAL ISSUES**

2 **Q. MS. PADGETT STATES THAT CLECS SHOULD ONLY HAVE A**
3 **NINETY DAY TRANSITION PERIOD. IS THIS REASONABLE?**

4 A. No. If anything, Ms. Padgett's proposal is the unreasonable one. First, if
5 CLECs were forced to disconnect their existing UNEs on a broad scale
6 and convert them to some other type of service, it would take BellSouth
7 much longer than 90 days just to develop a cutover plan for transitioning
8 the circuits to another CLEC's network. A "special project" such as this
9 would obviously have to be coordinated with the day-to-day operational
10 activities of BellSouth as well as the numerous other carriers involved.
11 Second, the TRA must ensure that CLECs can transition their services to
12 another CLEC before such a transition could occur, which as I stated in
13 my direct testimony, is not a simple conversion process. Sufficient time
14 must be allowed for this conversion to occur in an orderly manner, without
15 threatening customer disruption.

16
17 **Q. WHY WOULDN'T CLECS CONVERT THEIR UNES TO**
18 **BELLSOUTH'S SPECIAL ACCESS SERVICES?**

19 A. While they certainly will have that option, the underlying premise of the
20 triggers is that there will be evidence that the CLECs can either building
21 their own loops or utilize the wholesale offerings of another carrier. It
22 would defeat the purpose of the triggers and the impairment analysis if

1 CLECs were not given a reasonable opportunity to avail themselves of the
2 options implied by the triggers..

3

4 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

5 **A. Yes, it does.**

CERTIFICATE OF SERVICE

I hereby certify that on March 15, 2004 a copy of the foregoing document was serviced on the parties of record, via US mail.

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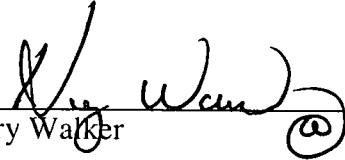
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November 25, 2002

Ms Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TWB-204
Washington, DC 20554

Re: Notice of Oral Ex Parte Communication, In the Matter of Review of the
Section 251 Unbundling Obligations of Incumbent Local Exchange
Carriers, CC Docket Nos. 01-338, 96-98 and 98-147

Dear Ms. Dortch:

In recent *ex partes*, AT&T has stated that the absolute minimum "crossover" point at which it becomes economically rational for a requesting competitive carrier to consider constructing its own interoffice transport facilities is reached when the carrier can aggregate approximately 18 DS3s of *total* traffic in a Local Serving Office (LSO), including all local, data, exchange access and interexchange traffic routed through the office. At Staff's request, AT&T has developed a detailed explanation of the methodology used to develop that estimate which can be found in Attachment A to this letter.

One of the critical points to note is that in developing the "crossover" point, AT&T did *not* attempt to assess the ILECs' TELRIC costs of providing transport to themselves and their affiliates (and thus the actual cost disadvantage that requesting carriers face in using such facilities to offer services that compete with the ILECs' services). Rather, AT&T compared the costs of provisioning its own transport to its average costs for purchasing ILEC *special access services*, which are admittedly *not* offered at cost-based rates. Indeed, they are priced at exorbitant levels. Thus, this analysis is highly favorable to the ILECs. Given that TELRIC costs are actually between half and two-thirds of the prevailing special access rates, the crossover point for facilities construction necessary for a competitive carrier not paying special access rates to achieve cost parity with the ILECs is between 28 and 36 DS3s of total traffic. See Attachment A.

As is also obvious from Attachment A, transport construction represents a high fixed cost. Moreover, nearly two-thirds of interoffice transport costs are fixed.¹ Thus, a carrier cannot be expected to begin construction of its own transport facilities until it is reasonably certain that it will have the necessary scale to recover its construction costs.² Otherwise, such construction would simply be wasteful.

In this regard, it is essential that CLECs be able to achieve a cost structure comparable to the ILEC's even where the incumbent's existing prices are well above costs. Where a CLEC has significantly higher costs than the ILEC, the CLEC knows that the ILEC could simply drop its prices below the CLEC's costs, but still above the ILEC's costs, and remain profitable. But by setting prices below the CLEC's costs, the ILEC would make it impossible for the entrant to remain economically viable. The prospect of such a pricing strategy is particularly high where, as is the case for services provided to businesses, the ILEC can price discriminate. This allows the ILEC to lower prices selectively, *i.e.*, only to those customers that could potentially be served by the CLEC, and thus to keep prices high for all other customers. Thus, because transport constitutes a sizeable percentage of the overall cost of telecommunications services, facilities-based entry is generally viable only where a CLEC can self-deploy transport at a cost that is not well in excess of the ILEC's costs.³

Finally, a carrier's analysis of whether to construct a fiber backbone ring (and thus provide its own transport) is very different from its analysis as to whether to build a Building Ring or a Customer Lateral off an existing Building Ring to provide the equivalent of a loop for large customer buildings. Accordingly, the amount of committed traffic necessary to support the construction of loops for large business customers – which AT&T has indicated is about 3 DS3s of traffic – is substantially less than the amount needed to support the construction of a backbone ring. The assumption here is that the existing transport ring is justified for other purposes and that the loop is addressed by incrementally attaching a small ring to serve a specific building and, where necessary, a short lateral extension. In support of AT&T's claim that 3 DS3s of traffic is required to support an economically rational lateral fiber build-out, and to ensure that the record is complete, AT&T is also submitting with this *ex parte* a detailed discussion regarding AT&T's estimation of loop construction costs, which is appended as Attachment B.

¹ See *ex parte* letter from C. Frederick Beckner to Marlene Dortch dated November 14, 2002, attaching white paper prepared by Professor Robert D. Willig entitled "Determining 'Impairment' Using the *Horizontal Merger Guidelines* Entry Analysis," p. 13.

² *Id.* at 5.

³ *Id.* at 7-8.